

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;
Nanci E. Langley, Vice Chairman;
Mark Acton; and
Robert G. Taub

Elwell Post Office
Elwell, Michigan

Docket No. A2012-112

ORDER AFFIRMING DETERMINATION

(Issued April 18, 2012)

I. INTRODUCTION

On December 15, 2011, the Postal Service advised the Commission that it “will delay the closing or consolidation of any Post Office until May 15, 2012.”¹ The Postal Service further indicated that it “will proceed with the discontinuance process for any Post Office in which a Final Determination was already posted as of December 12, 2011, including all pending appeals.” *Id.* It stated that the only “Post Offices” subject to closing prior to May 16, 2012 are those that were not in operation on, and for which a Final Determination was posted as of, December 12, 2011. *Id.* It affirmed that it “will not close or consolidate any other Post Office prior to May 16, 2012.” *Id.* at 2. Lastly,

¹ United States Postal Service Notice of Status of the Moratorium on Post Office Discontinuance Actions, December 15, 2011, at 1 (Notice).

the Postal Service requested the Commission “to continue adjudicating appeals as provided in the 120-day decisional schedule for each proceeding.” *Id.*

The Postal Service’s Notice outlines the parameters of its newly announced discontinuance policy. Pursuant to the Postal Service’s request, the Commission will fulfill its appellate responsibilities under 39 U.S.C. § 404(d)(5).

On January 3, 2012, Marjorie Brecht (Petitioner Brecht) filed a petition with the Commission seeking review of the Postal Service’s Final Determination to close the Elwell, Michigan post office (Elwell post office).² Additional petitions for review were received from John Hutchins (Petitioner Hutchins) and Patricia Walsh Mallory (Petitioner Mallory).³ The Final Determination to close the Elwell post office is affirmed.⁴

II. PROCEDURAL HISTORY

On January 20, 2012, the Commission established Docket No. A2012-112 to consider the appeal, designated a Public Representative, and directed the Postal Service to file its Administrative Record and any responsive pleadings.⁵

² Petition for Review received from Marjorie Brecht regarding the Elwell, Michigan post office 48832, January 3, 2012 (Brecht Petition).

³ Petition for Review received from John Hutchins regarding the Elwell, Michigan post office 48832, January 6, 2012 (Hutchins Petition); Petition for Review received from Patricia Walsh Mallory regarding the Elwell, Michigan post office 48832, January 11, 2012 (Mallory Petition). Attached to the Mallory Petition is a petition containing 79 signatures of customers of the Elwell, Michigan post office.

⁴ The Commission is divided equally, 2-2, on the outcome of this appeal. In the absence of a majority, the Final Determination stands.

⁵ Order No. 1155, Notice and Order Accepting Appeal and Establishing Procedural Schedule, January 20, 2012.

On January 19, 2012, the Postal Service filed the Administrative Record with the Commission.⁶ The Postal Service also filed comments requesting that the Commission affirm its Final Determination.⁷

Petitioners Hutchins and Mallory filed participant statements in support of their Petitions.⁸ On March 13, 2012, the Public Representative filed a reply brief.⁹

III. BACKGROUND

The Elwell post office provides retail postal services and service to 24 post office box customers. Final Determination at 2. No delivery customers are served through this post office. The Elwell post office, an EAS-53 level facility, provides retail service from 8:00 a.m. to 12:00 p.m. and 1:00 p.m. to 4:30 p.m., Monday through Friday, and 8:30 a.m. to 9:30 a.m. on Saturday. Lobby access hours are the same as retail access hours. *Id.*

The postmaster position became vacant on January 30, 2009 when the Elwell postmaster retired. A non-career officer-in-charge (OIC) was installed to operate the post office. *Id.* at 10. Retail transactions average 18 transactions daily (19 minutes of retail workload). *Id.* at 2. Post office receipts for the last 3 years were \$44,231 in FY 2008; \$38,223 in FY 2009; and \$31,815 in FY 2010. There are no permit or postage

⁶ The Administrative Record is attached to the United States Postal Service Notice of Filing Corrected Administrative Record, February 10, 2012 (Administrative Record). The Administrative Record includes, as Item No. 47, the Final Determination to Close the Elwell, Michigan Post Office and Continue to Provide Service by Rural Route Service (Final Determination). The Postal Service originally filed its Notice of Filing Administrative Record on January 19, 2012, but filed a Corrected Administrative Record, because the original was missing several item numbers. All citations refer to the Corrected Administrative Record. On January 19, 2012, the Postal Service filed a Motion for Late Acceptance of Administrative Record. That motion is granted.

⁷ United States Postal Service Comments Regarding Appeal, February 27, 2012 (Postal Service Comments).

⁸ Participant Statement received from John Hutchins, February 7, 2012 (Hutchins Participant Statement); Participant Statement received from Patricia Mallory, February 27, 2012 (Mallory Participant Statement).

⁹ Reply Brief of the Public Representative, March 13, 2012 (PR Reply Brief).

meter customers. *Id.* By closing this post office, the Postal Service anticipates savings of \$51,405 annually. *Id.* at 10.

After the closure, retail services will be provided by the Riverdale post office located approximately 5 miles away.¹⁰ *Id.* at 2. Delivery service will be provided to cluster box units (CBUs) by rural route service through the Riverdale post office. The Riverdale post office is an EAS-15 level post office, with retail hours of 9:00 a.m. to 4:00 p.m., Monday through Friday, and 9:00 a.m. to 10:00 a.m. on Saturday. One-hundred-twenty-two (122) post office boxes are available. *Id.* The Postal Service will continue to use the Elwell name and ZIP Code. *Id.* at 4-5, Concern Nos. 20-23, 42.

IV. PARTICIPANT PLEADINGS

Petitioners. Petitioners oppose the closure of the Elwell post office. Petitioner Hutchins asserts that the post office has been a source of good will in the Elwell community since the 1800s. Hutchins Petition at 1. Petitioner Mallory contends that the proposed change in service will not provide Elwell residents with regular and effective postal services. Mallory Petition at 1. Petitioners also contend that travel to another post office to obtain retail services would be a hardship for Elwell's elderly residents. Brecht Petition at 1; Mallory Petition at 1. Petitioners question the Postal Service's calculation of economic savings, arguing that a post office may not be closed solely to save money. *Id.*

Postal Service. The Postal Service argues that the Commission should affirm its determination to close the Elwell post office. Postal Service Comments at 2. The Postal Service believes the appeal raises four main issues: (1) the effect on postal services; (2) the impact on the Elwell community; (3) the economic savings expected to result from discontinuing the Elwell post office; and (4) the effect on employees. The

¹⁰ Petitioner Hutchins claims the travel distance is 5.7 miles. Hutchins Participant Statement at 1. The Postal Service states that the difference between 5 miles and 5.7 miles is "relatively insignificant" and "does not materially affect" its ability to provide regular and effective services. Postal Service Comments at 3 n.8. MapQuest estimates the driving distance between the Elwell and Riverdale post offices to be approximately 5.8 miles (8 minutes driving time).

Postal Service asserts that it has given these and other statutory issues serious consideration and concludes that the determination to discontinue the Elwell post office should be affirmed. *Id.*

The Postal Service explains that its decision to close the Elwell post office was based on several factors, including:

- the postmaster vacancy;
- a minimal workload and declining office revenue;
- a variety of other delivery and retail options (including the convenience of carrier delivery and retail service);
- little recent growth in the area;
- minimal impact on the community; and
- expected financial savings.

Id. at 5. The Postal Service contends that it will continue to provide regular and effective postal services to the Elwell community when the Final Determination is implemented. *Id.*

The Postal Service also asserts that it has followed all statutorily required procedures and has addressed the concerns raised by Petitioners regarding the effect on postal services, the effect on the Elwell community, economic savings, and the effect on postal employees. *Id.* at 12-13.

Public Representative. The Public Representative finds that the Postal Service has complied with the applicable statute and rules. PR Reply Brief at 6. However, he contends that the Postal Service has overstated its estimated economic savings. *Id.*

V. COMMISSION ANALYSIS

The Commission's authority to review post office closings is provided by 39 U.S.C. § 404(d)(5). That section requires the Commission to review the Postal Service's determination to close or consolidate a post office on the basis of the record

that was before the Postal Service. The Commission is empowered by section 404(d)(5) to set aside any determination, findings, and conclusions that it finds to be (a) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law; (b) without observance of procedure required by law; or (c) unsupported by substantial evidence in the record. Should the Commission set aside any such determination, findings, or conclusions, it may remand the entire matter to the Postal Service for further consideration. Section 404(d)(5) does not, however, authorize the Commission to modify the Postal Service's determination by substituting its judgment for that of the Postal Service.

A. Notice to Customers

Section 404(d)(1) requires that, prior to making a determination to close any post office, the Postal Service must provide notice of its intent to close. Notice must be given 60 days before the proposed closure date to ensure that patrons have an opportunity to present their views regarding the closing. The Postal Service may not take any action to close a post office until 60 days after its determination is made available to persons served by that post office. 39 U.S.C. § 404(d)(4). A decision to close a post office may be appealed within 30 days after the determination is made available to persons served by the post office. 39 U.S.C. § 404(d)(5).

The Administrative Record indicates the Postal Service took the following steps in providing notice of its intent to close. On March 21, 2011, the Postal Service distributed questionnaires to customers regarding the possible change in service at the Elwell post office. Final Determination at 2. A total of 203 questionnaires were distributed to delivery customers. Other questionnaires were made available at the retail counter. A total of 61 questionnaires were returned. On April 19, 2011, the Postal Service held a community meeting at the Seville Township Hall in Elwell to address customer concerns. Seventeen (17) customers attended. *Id.*

The Postal Service posted the proposal to close the Elwell post office with an invitation for comments at the Elwell and Riverdale post offices from June 13, 2011

through August 14, 2011. Final Determination at 2. The Final Determination was posted at the Elwell post office from December 6, 2011 through January 7, 2012, and at the Riverdale post office from December 6, 2011 until removal on January 17, 2012, as shown by round-date stamps. Postal Service Comments at 4; Administrative Record, Item No. 49.¹¹ The Postal Service has satisfied the notice requirements of 39 U.S.C. § 404(d).

B. Other Statutory Considerations

In making a determination on whether or not to close a post office, the Postal Service must consider the following factors: the effect on the community; the effect on postal employees; whether a maximum degree of effective and regular postal service will be provided; and the economic savings to the Postal Service. 39 U.S.C. § 404(d)(2)(A).

The Postal Service must also comply with the provisions of 39 U.S.C. § 101(b), which prohibits closing any small post office solely for operating at a deficit.

Effect on the community. Elwell, Michigan is an unincorporated community located in Gratiot County, Michigan. Final Determination at 10. The community is administered politically by the Seville Township. Police protection is provided by the Gratiot County Sheriff. Fire protection is provided by the Seville Township. The community is comprised of farmers and those who work at nearby communities or in local businesses. *Id.* Residents may travel to nearby communities for other supplies and services. See *generally* Administrative Record, Item No. 22 (returned customer questionnaires and Postal Service response letters).

As a general matter, the Postal Service solicits input from the community by distributing questionnaires to customers and holding a community meeting. The Postal Service met with members of the Elwell community and solicited input from the

¹¹ The Final Determination in the Administrative Record is Item No. 47. Although also labeled as Item No. 47, separate round-date stamped Final Determination cover sheets are listed in the Administrative Record Index as Item No. 49 and are included in the record following Item No. 48.

community with questionnaires. In response to the Postal Service's proposal to close the Elwell post office, customers raised concerns regarding the effect of the closure on the community. The concern and the Postal Service's response are summarized in the Final Determination. Final Determination at 10.

Petitioner Hutchins asserts that the post office should be kept open as a source of good will in the Elwell community. Hutchins Petition at 1. The Postal Service responds that it has considered the effect of the closing on the Elwell community. Postal Service Comments at 8-10.

The Postal Service has adequately considered the effect of the post office closing on the community as required by 39 U.S.C. § 404(d)(2)(A)(i).

Effect on employees. The Postal Service states that the Elwell postmaster retired on January 30, 2009, and that an OIC has operated the Elwell post office since then. Final Determination at 10. It asserts that after the Final Determination is implemented, the temporary OIC may be separated and that no other Postal Service employee will be adversely affected. *Id.*

The Postal Service has considered the possible effects of the post office closing on the OIC and has satisfied its obligation to consider the effect of the closing on employees at the Elwell post office as required by 39 U.S.C. § 404(d)(2)(A)(ii).

Effective and regular service. The Postal Service contends that it has considered the effect the closing will have on postal services provided to Elwell customers. Postal Service Comments at 5. It asserts that customers of the closed Elwell post office may obtain retail services at the Riverdale post office located 5 miles away. Final Determination at 2. Delivery service will be provided by rural route service through the Riverdale post office. The Elwell post office box customers may obtain Post Office Box service at the Riverdale post office, which has 122 boxes available. *Id.*

For customers choosing not to travel to the Riverdale post office, the Postal Service explains that retail services will be available from the carrier. Postal Service Comments at 6. The Postal Service adds that it is not necessary to meet the carrier for service since most transactions do not require meeting the carrier at the mailbox. *Id.*

Petitioners contend that rural route service will not provide Elwell residents with the required maximum degree of regular and effective postal services. Mallory Petition at 1. Petitioners assert that travel to another post office to obtain retail services would be a hardship for Elwell's elderly residents. Brecht Petition at 1; Mallory Petition at 1. The Postal Service responds that rural carrier service will provide Elwell residents with regular and effective postal services and may be more beneficial for its elderly residents. Postal Service Comments at 7.

The Postal Service has considered the issues raised by customers concerning effective and regular service as required by 39 U.S.C. § 404(d)(2)(A)(iii).

Economic savings. The Postal Service estimates total annual savings of \$51,405. Final Determination at 10. It derives this figure by summing the following costs: postmaster salary and benefits (\$44,279) and annual lease costs (\$7,992), minus the cost of replacement service (\$866). The Postal Service states that a one-time expense of \$500 will be incurred for the movement of this facility. *Id.*

Petitioner Mallory questions the Postal Service's calculation of economic savings, arguing that a post office may not be closed solely to save money. Mallory Petition at 1. The Postal Service responds that it considered a variety of factors in deciding to close the Elwell post office and concluded that carrier service will cost substantially less and provide residents with regular and effective postal services. Postal Service Comments at 10.

The Public Representative contends that the Postal Service overestimated its economic savings by using the salary and benefits of a Postmaster, when the Elwell post office is run by a non-career OIC. PR Reply Brief at 6-7.

The Elwell post office postmaster retired on January 30, 2009. Final Determination at 2. The post office has since been staffed by a non-career OIC who, upon discontinuance of the post office, may be separated from the Postal Service. The postmaster position and the corresponding salary will be eliminated. See, e.g., Docket No. A2011-67, United States Postal Service Comments Regarding Appeal, October 24, 2011, at 13; Docket No. A2011-68, United States Postal Service Comments Regarding

Appeal, November 2, 2011, at 10. Furthermore, notwithstanding that the Elwell post office has been staffed by an OIC for approximately 3 years, even if the OIC salary were used, the Postal Service would have satisfied the requirements of section 404(d)(2)(A)(iv).

The Postal Service has satisfied the requirement that it consider economic savings as required by 39 U.S.C. § 404(d)(2)(A)(iv).

Section 101(b). Section 101(b) prohibits closing any small post office solely for operating at a deficit. Petitioner Mallory alleges that the Postal Service is closing the Elwell post office solely for economic reasons. Mallory Petition at 1.

To be sure, economics plays a role in the Postal Service's decision. However, the Commission is not prepared to conclude that the Postal Service's determination violates section 101(b). In addition to considering workload at the Elwell post office (revenues declining and averaging only 18 retail transactions per day), the Postal Service took into account other factors such as the postmaster vacancy, the minimal impact on the community, and expected financial savings. In addition, it considered the alternate delivery and retail options available to customers. Final Determination at 2.

The Postal Service did not violate the prohibition in section 101(b) on closing the Elwell post office solely for operating at a deficit.

VI. CONCLUSION

The Postal Service has adequately considered the requirements of 39 U.S.C. § 404(d). Accordingly, the Postal Service's determination to close the Elwell post office is affirmed.¹²

¹² See footnote 4, *supra*.

It is ordered:

The Postal Service's determination to close the Elwell, Michigan post office is affirmed.

By the Commission.

Shoshana M. Grove
Secretary

DISSENTING OPINION OF CHAIRMAN GOLDWAY

The Administrative Record is inaccurate with regard to economic savings. As such, the Postal Service has not adequately considered economic savings as required by 39 U.S.C. § 404(d)(2)(A)(iv).

The Postal Service argues that savings should be calculated based on a full-time postmaster's salary. Yet the Elwell post office has been operated by a non-career officer-in-charge (OIC) since the former postmaster retired on January 30, 2009. On the one hand, the Postal Service argues that the effect on employees of this closing will be minimal because only a non-career OIC will be eliminated; yet on the other hand, it argues that the savings should be calculated using a full-time postmaster position.

A non-career OIC has been in place for 3 years. Given this extended period of time, and the Postal Service's current financial difficulties, it is clear that the Postal Service has no obligation to maintain a full-time postmaster in small facilities such as Elwell. Upon closure of the facility, the Postal Service may, at most, avoid continuing to pay the OIC level salary.

The Postal Service already claims billions of dollars in savings from reducing labor costs. I believe the savings from substituting OICs in postmaster positions throughout the nation have already been included in those billions. There are inherent and blatant contradictions in the Administrative Record that must be corrected on remand.

It is not the statutory responsibility of the Commission to correct the Administrative Record for the Postal Service and certainly not to make its own surmise about what and/or whether there would be savings if accurate data were in the Administrative Record. Therefore, the decision to close should be remanded to the Postal Service to correct the Administrative Record and present a more considered evaluation of potential savings.

Moreover, the Postal Service recently announced a moratorium on post office closings. It is confusing and perhaps unfair to require some citizens whose post offices have received a discontinuance notice as of December 12, 2011 to gather evidence and pursue an appeal to the Commission, while others whose post offices were in the review process, but had not yet received a discontinuance notice by December 12, 2011, have the respite of a 5-month moratorium and the opportunity to have further consideration of alternatives by the Postal Service.

The citizens of Elwell, Michigan and their concerns regarding the loss of a neighborhood post office should be afforded the same opportunity to be heard and considered as the citizens of the approximately 3,700 post offices fully covered by the moratorium.

Ruth Y. Goldway

DISSENTING OPINION OF VICE CHAIRMAN LANGLEY

The Postal Service did not adequately consider the economic savings as required by 39 U.S.C. § 404(d)(2)(A)(iv). The Postal Service should take into consideration that a non-career postmaster relief (PMR) has been in charge of this facility for over 3 years, since January 2009, not an EAS-53 postmaster, and reflect the PMR's salary and benefits in its cost savings analysis.

While the Administrative Record states that the current lease does not terminate until May 31, 2015, the Administrative Record is unclear on whether there is a cancellation clause. See Administrative Record, Item Nos. 15 at 1, 18. If no such clause exists, it should be noted in the Administrative Record that any savings from the lease will not be realized for 3 years. As a government entity, the Postal Service should ensure that its cost/benefit analysis accurately identifies capturable cost savings and does not overstate savings.

I find that the Administrative Record evidence does not support the Postal Service's decision to discontinue operations at the Elwell post office and should be remanded.

Nanci E. Langley